Cheah Swee Jin v Yeoh Guan Hean

HIGH COURT (PENANG) – CIVIL SUIT NO 115 OF 1987
SHAIK DAUD J
20 JULY 1988

Societies – Plaintiff suspended from club membership – Writ of summons filed by plaintiff against present president of club for unlawful suspension – Whether president at time of suspension ought to be defendant instead – Societies Act 1966, ss 2 & 9(c)

Civil Procedure – Interlocutory injunction order – Amendment of – Order can only be amended under O 20 r 11 of Rules of the High Court 1980 – O 20 r 8(2) has no application to orders – Rules of the High Court 1980, O 20 rr 8(2) & 11

The plaintiff was a member of the Penang Swimming Club. On 23 March 1982, he was informed that his membership had been suspended for non-payment of bills. In 1987, the plaintiff filed a writ of summons against R, contending that his suspension was unlawful and in breach of the club rules. By a court order dated 8 October 1987, the plaintiff obtained an interlocutory injunction against R restraining R from suspending the plaintiff until the final determination of the writ of summons. Subsequently, the plaintiff applied for leave to amend the writ of summons, statement of claim and court order of 8 October 1987 by substituting the name of R with that of the present defendant, who was the then president of the club in 1982. This application was granted. The present substituted defendant now applied to the court for an order that the suit filed against him is frivolous, vexatious and is an abuse of the process of the court under O 18 r 19 of the Rules of the High Court 1980. The defendant contended that he was the president of the Penang Swimming Club from 1980-82 and as he no longer holds office as the president for the year 1987/88 the action against him ought to be struck off as he is in no capacity to be sued.

Held, allowing the defendant's application:

(1) By virtue of s 9(c) of the Societies Act 1966, a society may sue or be sued by a registered public officer of the society. In the case of the Penang Swimming Club, no such public officer was registered with the Registrar of Societies. Thus, if the society is to be sued, the plaintiff has to sue the office bearers.

(2) Under s 2 of the Societies Act 1966, 'office-bearer' is defined to mean 'any person who is the president, vice president or secretary or treasurer of such society or any branch of a society, or who is a member of the committee or governing body thereof, or of any branch thereof or who holds in such society or branch of a society any office or position analogous to any of those mentioned above'. By virtue of this definition, the word 'is' must necessarily mean the incumbent; in other words, the present office bearers.

(3) At the time of filing this writ, the present defendant was not the incumbent president nor did he hold any of the offices described in s 2. He is in no capacity to represent the club and is in no position to comply with any orders that may be given as he is just an ordinary member now.

(4) It was wrong for the plaintiff to have asked for an amendment of the court order issued on 8 October 1987, as such order can only be amended under the slip rule under O 20 r 11. Order 20 r 8(2) has no application to such orders.

(5) It was wrong for the plaintiff to have asked for an amendment of the order when only the writ and statement of claim ought to be amended. What the plaintiff ought to have done was, having applied for the writ and the statement of claim to be amended, he should also apply for the interlocutory injunction already issued against the then defendant, R, to be dissolved and then apply for a fresh one against the present defendant, Y.

[*Editorial Note*: The plaintiff appealed to the Supreme Court vide Civil Appeal No 81 of 1988. The Supreme Court (comprising Abdoolcader, Harun and Gunn Chit Tuan SCJJ) dismissed the appeal with costs on 13 February 1989. In upholding the High Court judgment, the Supreme Court observed that the procedure adopted in suing a club in England, which is by virtue of common law origin, is different in this country by virtue of the Societies Act 1966 (Revised-1987).]

Case referred to

1 *Revici* v *Prentice Hall Incorporated & Ors* [1969] 1 All ER 772 (refd)

Legislation referred to

Rules of the High Court 1980 O 15 r 8(4), O 18 r 1, O 20 rr 8(2), 11, O 41 r 7(2)
Societies Act 1966 ss 2, 9(c)

Darshan Singh for the plaintiff.
NG Sivanandan for the defendant.

Cur Adv Vult

Shaik Daud J: This summons-in-chambers (encl 18) arose as a result of a writ of summons filed by the plaintiff. Originally the writ was filed on behalf of the plaintiff against one Ronnie Ooi in a similar capacity as the present defendant. In the statement of claim the plaintiff claimed that he was at all material times a member of the Penang Swimming Club. He alleged that on 23 March 1982 he was informed that his membership had been suspended for non-payment of bills. The plaintiff contends that his suspension was unlawful and in breach of the club rules. Whereupon the plaintiff claims for a declaration that the suspension was unlawful, a permanent injunction restraining the defendant from further suspending the plaintiff and that all references of the suspension of the plaintiff be expunged from the club's records, and lastly damages and costs.

Pursuant to this, based as it were on a certificate of urgency, the plaintiff applied ex parte for an interlocutory injunction restraining the defendant from suspending the plaintiff until the final determination of the writ of summons. This ex parte application was heard and granted on 7 October 1987. Then by a summons-in-chambers dated 22 October 1987 the plaintiff applied ex parte for leave to amend the writ of summons, statement of claim and court order dated 8 October 1987 by substituting the name of 'Ronnie Ooi' with that of 'Yeoh Guan Hean'. This application too was granted. In his affidavit the plaintiff averred that he had wrongly named Mr Ronnie Ooi when the then president was Yeoh Guan Hean.

Consequently this summons-in-chambers (encl 18) was filed by the present substituted defendant Yeoh Guan Hean, who in his affidavit in support of his application (see encl 19) averred that he was the president of the Penang Swimming Club from 20 August 1980 to 15 June 1982. Pursuant to r 39 of the Penang Swimming Club Rules 1981 the then committee of the club suspended the plaintiff. The committee for the year 1987/1988 does not comprise any of the committee members of 1982. In other words the defendant avers that since he no longer holds office as the president for the year 1987/1988, the action against him is frivolous, vexatious and misconceived. Mr NG Sivanandan on behalf of the present defendant Yeoh Guan Hean states that the plaintiff knew all along that the defendant was no longer the president and as such the proceedings against him is a nullity, and ought to be struck off as the present defendant is in no capacity to be sued.

By virtue of s 9(c) of the Societies Act 1966 a society may sue or be sued by a registered public officer of the society. In the case of the Penang Swimming Club no such public officer was registered with the Registrar of Societies (see YGH 6 in encl 9). In view of this, if this society is to be sued, the plaintiff has to sue the office bearers. 'Office bearer' as defined in s 2 of the Act means:

> any person who is the president, vice president or secretary or treasurer of such society or any branch of a society, or who is a member of the committee or governing body thereof, or of any branch thereof or who holds in such society or branch of a society any office or position analogous to any of those mentioned above.

By virtue of this definition, I am of the view that the word 'is' must necessarily mean the incumbent. In other words the present office bearers. It is clear from evidence as conceded by the plaintiff that at the time of filing this writ on 2 December 1987 Yeoh Guan Hean was not the incumbent president nor did he hold any of the offices described in s 2 thereof. The present defendant is in no capacity to represent the club. He has no locus standi and is in no position to comply with any orders that may be given as he is just an ordinary member now. As a matter of fact the plaintiff has also filed another ex parte summons-in-chambers against Yeoh Guan Hean for an interim injunction on similar lines as the one granted against Ronnie Ooi on 8 October 1987. I am of the view that such an injunction would be of no value as the present defendant will in no way be able to comply with it. By using the word 'is' in s 2 of the Act, I am of the view that the legislature made it clear that the incumbent is the right party to be sued. As such I am also of the view that the plaintiff has no cause of action against the present defendant and the suit filed against him is frivolous, vexatious and is an abuse of the process of the court. For this reason alone I feel that the applicant must succeed under O 18 r 19 of the Rules of the High Court 1980.

Apart from this there are other aspects of this suit as it presently stands which ought to be taken into consideration. When the plaintiff came to file the ex parte application to amend his writ and statement of claim he also included that the order issued on 8 October 1987 be amended. Mr Sivanandan submits that it was wrong for the plaintiff to have also amended the order as an order can only be amended under the slip rule under O 20 r 11, and O 20 r 8(2) has no application to orders. With this submission I agree. When the court granted the amended order there was no fresh affidavit filed in support thereof. The plaintiff merely amended the original affidavit, and this is contrary to O 41 r 7(2). It was wrong for the plaintiff to amend the order when only the writ and statement of claim ought to be amended. What the plaintiff ought to have done was, having applied for the writ and statement of claim to be amended, he should also apply for the interlocutory injunction already issued against the then defendant Mr Ronnie Ooi to be dissolved and then apply for a fresh one against the present defendant Yeoh Guan Hean. In failing to do this, technically there are now two sets of injunctions for the same matter. It is also contended that O 18 r 1 also had not been complied with in that the present defendant was not served with the statement of claim but only with the amended writ. The court granted the order to bring the present defendant in on 6 November 1987 but up to the date of hearing, this order had not been extracted and served on the present defendant, contrary to O 15 r 8(4) (see *Revici* v *Prentice Hall Incorporated & Ors*[1]). The plaintiff while conceding non-compliance has not put forth any explanation for it.

Mainly for the first reason that the plaintiff has no cause of action against this defendant and for all the other reasons enumerated above, I am of the view that the claim ought to be struck off. In the event I allowed the application by the defendant with costs.

Application allowed.

Solicitors: *Darshan Singh & Co*; *Presgrave & Mathews*.

Reported by *Ng Sheau Jiuan*